

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 2, 2000

IN RE:

**PETITION OF LYNWOOD UTILITY
CORPORATION TO CHANGE AND
INCREASE RATES AND CHARGES**

**DOCKET NO.
99-00507**

**ORDER DENYING PETITION FOR RECONSIDERATION AND GRANTING
LIMITED INTERVENTION BY JACOB C. (CHRIS) MARTIN**

This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on July 11, 2000 upon a Petition for Reconsideration (the "Petition") filed by Mr. Jacob C. (Chris) Martin. In his Petition, Mr. Martin asked the Authority to reconsider its Order entered on May 10, 2000 (the "Order"), in which the Authority approved the rate increase sought by Lynwood Utility Corporation ("Lynwood" or the "Company") but left this docket open for further consideration of three unresolved issues.

BACKGROUND

Lynwood's Petition

Lynwood is a public utility that provides sewer service to residential customers in the Cottonwood, Legends Ridge, and River Landing subdivisions in Williamson County.¹

¹ Lynwood reported that as of August 1, 1999, it had 484 residential customers in Cottonwood, sixty-one (61) in Legends Ridge, and none in River Landing. Lynwood also had four (4) residential customers who were not located in any of these subdivisions. Lynwood projected that in December 2002 it would have 102 residential customers in Legends Ridge and sixty (60) in River Landing. (Lynwood's) Response to (Authority's) Second Information Request, October 15, 1999.

Lynwood also serves one non-residential customer, the Walnut Grove Elementary School. Lynwood has been authorized to provide utility service since 1976.

On July 15, 1999, Lynwood filed a Petition ("Lynwood's Petition") seeking the Authority's approval for an increase in its rates for sewer service.² If approved, this would be Lynwood's first rate increase since 1986. In its Petition, Lynwood informed the Authority that

Under existing rates Lynwood's revenues and revenue projections are not sufficient to cover Lynwood's operating expenses. Lynwood's rates and charges must be revised to permit it to meet its operating expenses, to earn a fair rate of return, and to provide funds to maintain its sewer plant and facilities to serve existing and future customers within its certificated service area.³

In order to meet its service needs, Lynwood requested that the Authority approve a rate increase that would give Lynwood additional annual revenues of \$209,101.00. Lynwood projected that the impact of the revenue increase would be that the "average bill for a residential customer will increase from \$15.63 to \$45.00 a month."⁴

As the Petition explained, it had been Lynwood's long-time practice to charge its customers for sewer service based on the number of bedrooms in a customer's home. Lynwood proposed to change this practice to one in which a customer's rates for sewer service would be based on the customer's water usage. Accordingly, Lynwood was negotiating with the water utilities that serve its customers to arrange for these utilities to bill Lynwood's customers, on Lynwood's behalf, for sewer service.⁵

An attachment to Lynwood's Petition listed the Company's proposed residential

² A public utility must obtain Authority approval before increasing its rates. Tenn. Code Ann. § 65-5-203.

³ Lynwood's Petition, July 15, 1999, at 1.

⁴ Lynwood's Petition, July 15, 1999, at 4.

⁵ Lynwood's Petition, July 15, 1999, at 3.

and non-residential rates and fees. Lynwood proposed a residential rate of \$5.77 per one thousand (1,000) gallons of water usage, with a minimum monthly charge of \$15.00. The proposed non-residential rate was \$7.21 per one thousand (1,000) gallons of water usage, with a minimum monthly charge of \$20.00. Lynwood proposed to charge tap fees of \$2,750.00 for residential customers and to assess tap fees from non-residential customers based on water usage. Lynwood also proposed a sewer connection fee of \$250.00 for both types of customers, as well as a returned check charge of \$20.00.

Lynwood's Petition discussed the situation surrounding a change of ownership of the utility that took place in 1999, at which time the present owners purchased Lynwood. The change of ownership, according to Lynwood, is related to Lynwood's need for a rate increase.

As stated above, Lynwood first received authorization to provide sewer service from the Tennessee Public Service Commission in 1976. In 1996, Lynwood was serving the Cottonwood subdivision and the Walnut Grove Elementary School. At that time, Mr. David Terry was developing a subdivision called Legends Ridge near Cottonwood. In order to provide sewer service to Legends Ridge, Mr. Terry bought Lynwood. Mr. Terry then embarked on expansions to Lynwood's system so that it could serve both Cottonwood and Legends Ridge. As part of this project, Mr. Terry took out a loan for \$305,000 from First Tennessee Bank on May 30, 1997.⁶

While Mr. Terry was attempting to expand Lynwood, Lumbermen's Investment Corporation ("Lumbermen's") was beginning to develop a nearby subdivision called River Landing through a local company, Smith Crowe Property Company, LLC ("Smith

⁶ Lynwood's Petition, July 15, 1999, at 2; Amendment to Petition, November 2, 1999, at 1.

Crowe"). Smith Crowe contacted Lynwood about providing sewer service to River Landing.⁷

On June 28, 1998, Lynwood and Lumbermen's entered into an agreement referred to as the Utilities Agreement, under which Lynwood agreed to provide sewer service to River Landing. This service would require further expansion of Lynwood's system, and Lumbermen's agreed to pay for this expansion. Lumbermen's also agreed to pay the costs of expanding the system beyond what was needed for River Landing, and Lynwood agreed to reimburse Lumbermen's for these costs.⁸

Lynwood then defaulted on the loan from First Tennessee Bank. As stated in Lynwood's Petition:

After Lynwood defaulted on the loan to First Tennessee Bank, [Lumbermen's] became concerned about the financial viability of Lynwood. To make sure that Lynwood remained in operation so that River Landing would have sewer service available, [Lumbermen's] began providing management and financial assistance to Lynwood.⁹

This assistance increased until ultimately Smith Crowe purchased Lynwood.

On December 16, 1998, the note representing Lynwood's \$305,000 loan was assigned from First Tennessee to Lumbermen's.¹⁰ On the same day, as part of a management agreement, the day-to-day management of Lynwood was taken over by Utility Holdings, Inc. ("Utility Holdings"); the partnership that owns Utility Holdings has common ownership with Smith Crowe. Lumbermen's also began providing funds to Lynwood so that Lynwood could meet its operating expenses. Finally, on May 12, 1999,

⁷ Lynwood's Petition, July 15, 1999, at 1-2.

⁸ Lynwood's Petition, July 15, 1999, at 1-2.

⁹ Lynwood's Petition, July 15, 1999, at 2.

¹⁰ Lynwood has reported that this note is still in default and that Lynwood has not made any payments on the principal amount of the loan either to Lumbermen's or to First Tennessee Bank. (Lynwood's) Response to (Authority's) Third Information Request, January 18, 2000, at 1.

Southern Utility Corporation (“Southern Utility”), a corporation whose shareholders are also the owners of Smith Crowe, purchased the stock of Lynwood.¹¹

One problem that has arisen from this last transaction is that the previous owner of Lynwood, Mr. Terry, did not obtain approval from the Authority, as required by law,¹² before transferring ownership of Lynwood to Southern Utility. Pursuant to the Authority’s May 10, 2000 Order, this issue remains open for consideration by the Authority.

In reviewing Lynwood’s request for a rate increase, the Authority gathered extensive information from Lynwood about its transactions, financial status, income and expenses, and plans for expansion. In all, the Authority submitted to Lynwood, and Lynwood responded to, four requests for information and supporting documentation.

On September 15, 1999, Lynwood published notice of its Petition, including a list of all its proposed rates and fees, in the Williamson County newspaper *The Review Appeal*, in accordance with the Authority’s rules concerning notice.¹³

Lynwood’s representatives discussed its request for a rate increase extensively with representatives of the Consumer Advocate Division of the Office of the Attorney General (the “Consumer Advocate”). The Consumer Advocate was created by the General Assembly to represent the interests of Tennessee consumers in matters that involve public utilities.¹⁴ Intervention is a procedure whereby the Consumer Advocate

¹¹ Lynwood’s Petition, July 15, 1999, at 2-3. As Lynwood has explained in response to a request for information, the transfer of ownership from Mr. Terry to Southern Utility was in exchange for Lumbermen’s assuming the debt Lynwood owed to First Tennessee. (Lynwood’s) Response to (Authority’s) Third Information Request at 2, January 18, 2000.

¹² Tenn. Code Ann. § 65-4-113 requires a public utility to obtain the Authority’s approval before transferring its authority to provide utility services.

¹³ Tennessee Regulatory Authority, General Public Utilities Rules, Rule 1220-4-1-.05.

¹⁴ The statute establishing the Consumer Advocate Division is codified at Tenn. Code Ann. § 65-4-118.

can participate in a proceeding when it objects to a rate increase or other action by a utility; however, in this docket, the Consumer Advocate chose not to intervene. No other person, company, or organization has asked the Authority for permission to intervene or participate in this docket before the Hearing held on January 26, 2000, the decision announced on February 29, 2000, or the Order entered on May 10, 2000.¹⁵

On November 2, 1999, Lynwood filed an Amendment (the "Amendment") to its Petition. In this Amendment, Lynwood asked the Authority to approve the \$305,000 loan from First Tennessee Bank to Lynwood and to approve the assignment of the loan from First Tennessee Bank to Lumbermen's.¹⁶ The Amendment explained that the original loan was to be repaid within one year and, therefore, Lynwood had not asked for the Authority's approval.¹⁷ Nevertheless, because the loan had not actually been repaid within one year, it appeared that the loan would require Authority approval. Lynwood also asked the Authority to approve other agreements between Lynwood and Lumbermen's which called for Lynwood to reimburse Lumbermen's for expansion costs that were not attributable to the additional capacity installed for River Landing as well as for funds Lumbermen's advanced to Lynwood for operating expenses.¹⁸

On January 20, 2000, Lynwood filed with the Authority the Pre-Filed Testimony of Mr. Davis Lamb, President of Lynwood. Mr. Lamb elaborated on the expansion of the Lynwood system. This expansion involves two phases. Mr. Lamb explained Phase I as follows:

¹⁵ Mr. Martin petitioned the Authority for reconsideration of the Order, not to intervene in the proceeding.

¹⁶ Amendment, November 2, 1999, at 2.

¹⁷ Amendment at 2. Tenn. Code Ann. § 65-4-109 requires Authority approval of any loan obtained by a utility that is to be repaid in more than one year.

¹⁸ Amendment, November 2, 1999, at 2.

In order to serve the anticipated 150 new homes in Legends Ridge, the plant needed to be expanded to treat an additional 52,500 gpd [gallons per day] (based on 350 gpd/unit). The Phase I expansion of the plant increased the capacity by 75,000 gpd from 125,000 gpd to 200,000 gpd.¹⁹

Phase II added capacity to serve River Landing. As Mr. Lamb explained:

River Landing was able to use the remaining 21,700 gpd that was part of the Phase I expansion. The River Landing Subdivision had a total of 187 lots, 62 of which could be served in Phase I, so an additional 43,750 gpd of capacity was needed. The Phase II Expansion of the plant increased its capacity from 200,000 gpd to 400,000 gpd, 43,750 gallons or 22% of this expansion was required by the River Landing Subdivision.²⁰

Mr. Lamb stated that Lynwood would need a rate of return of eight percent (8%) on its rate base.²¹ He explained that when Utility Holdings took over Lynwood, Lynwood did not have high enough revenues to meet its monthly obligations.²² Lynwood also needed funds to bring its system into compliance with Tennessee Department of Environment and Conservation standards.²³ According to Mr. Lamb, Lumbermen's contributed \$324,200.00 to Lynwood to cover the costs of expanding Lynwood's system to serve River Landing.²⁴ Lumbermen's also loaned Lynwood \$23,252.18 to pay for operating expenses.²⁵ Mr. Lamb explained that Lynwood would have a net loss of \$139,351.00 for 1999, and that many improvements were needed for Lynwood's system other than those related to the expansion to serve the new subdivisions.²⁶ As Mr. Lamb stated,

The Phase I expansion [to serve Legends Ridge] from 125,000 to 200,000 gallons per day (gpd) was operational. The expansion had not been adequately funded so the plant was operational but many final items were

¹⁹ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 7.

²⁰ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 8.

²¹ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 16.

²² Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 6.

²³ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 11.

²⁴ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 8.

²⁵ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 9.

²⁶ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 10.

incomplete. The plant still showed evidence of 20 years of neglect such as bare electrical wires, outdated equipment, collapsed railing, and many other items.²⁷

Mr. Lamb listed a number of repairs and improvements which have been made since Lynwood was purchased by Southern Utility. As Mr. Lamb stated:

We have added alarms to the clarifiers and pumps, reworked concrete joints, stabilized handrails, reworked electrical lines, replaced a check valve and impellers at the pump station, corrected dead areas at dosing, and we will be repairing the existing collection system lines which have 32 service areas subject to infiltration and one section of main line that needs repair.²⁸

These repairs were needed because, in Mr. Lamb's words,

The Lynwood sewer treatment plant was built in the late 1970s. Very little improvements had been made to the plant. Regular repair and maintenance items which should have been done by previous owners was neglected. Lynwood's consulting engineer recommended these improvements, and they are necessary to keep the plant functioning as required by the Department of Environment and Conservation.²⁹

Mr. Lamb testified concerning his meetings with representatives of the Consumer Advocate to discuss Lynwood's Petition. The Consumer Advocate made suggestions concerning Lynwood's calculation of its rate base, and Lynwood made some changes in its requests after meeting with the Consumer Advocate.³⁰

As to the effect of the rate increase on Lynwood's financial situation, Mr. Lamb noted that:

While the increase is large, the requested increase still does not cover Lynwood's full cost of service. For the year 2000 test year, Lynwood projects that its revenue requirement will be \$424,075, and the rates requested will produce revenues of only \$335,024. This trend will continue at least through 2003. Beginning in 2004 the profit and loss projections show that the requested rates will begin to cover the cost of

²⁷ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 7.

²⁸ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 10.

²⁹ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 11.

³⁰ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 11, 14.

service. The projections, however, do not include any increase in expenses which will probably occur by that date.³¹

Lynwood's Hearing

A Hearing in this docket was originally scheduled for December 7, 1999. Upon motion³² by Lynwood, the Hearing was postponed. The Authority issued a second Notice of Hearing on January 10, 2000, and the Hearing in this docket was held on January 26, 2000. Lynwood presented testimony and supporting documentation demonstrating that Lynwood's current revenues under its current rate structure were not sufficient to meet its operating expenses, maintain its sewer plant, or earn a fair rate of return.

After the Hearing, the Authority submitted a fourth request for information to Lynwood. In response to this request, Lynwood informed the Authority that it had discovered that Walnut Grove Elementary School is not being charged according to Lynwood's commercial tariff but instead is being billed at a flat rate of \$787.50 per month. Based on the school's water usage, this represented a substantial overbilling. Lynwood stated that its present owners do not know how the school's rate was originally set, this rate having been set in 1989, before either Mr. Terry or Southern Utility owned Lynwood.³³

Lynwood also reported to the Authority that the previous owner, Mr. Terry, waived at least seventy-seven (77) tap fees that should have been collected from owners of lots in Legends Ridge. These tap fees, valued at \$1,750 each, would total \$134,750.³⁴

³¹ Pre-Filed Testimony of Davis Lamb, January 20, 2000, at 16.

³² Lynwood's motion stated as grounds for postponement that further time was need to allow Lynwood to conclude negotiations with the Consumer Advocate.

³³ (Lynwood's) Response to (Authority's) Fourth Information Request, February 8, 2000, at 1-2.

³⁴ (Lynwood's) Response to (Authority's) Fourth Information Request, February 8, 2000, at 2-5.

Approval of Lynwood's Rate Increase

Lynwood's Petition for a rate increase came before the Authority at the regularly scheduled Authority Conference held on February 29, 2000. At that Conference, the Directors voted unanimously to approve a rate increase by Lynwood. The Authority approved Lynwood's proposed residential rates and other charges as amended, as well as Lynwood's proposed non-residential rates. Lynwood's overall return on rate base was set at eight percent (8%). Lynwood was directed to revise its contract for sewer tap services in its existing tariff to clarify that sewer tap services automatically transfer with the transfer of title to subsequent owners. The proposed revisions to Lynwood's rules and regulations were also approved. The indebtedness incurred by the new owners of Lynwood through the note assigned to Lumbermen's was approved. Finally, the indebtedness incurred by Lynwood through its Utilities Agreement and two (2) amendments to the Utilities Agreement was approved.

The Authority's action in approving a rate increase for Lynwood was based upon the Authority's finding, after careful review of Lynwood's Petition, as amended, as well as all information supplied by Lynwood in response to inquiries by the Authority, that a rate increase was necessary for Lynwood to meet operating expenses, maintain its sewer system to serve its customers, and earn a fair rate of return.

The Directors also voted unanimously to hold this docket open for future action to address three unresolved issues: (1) the overbilling of Walnut Grove Elementary School; (2) the transfer of control of Lynwood from the previous owner to the current owners, which was not brought before the Authority for approval; and (3) the alleged waiver of tap fees by Lynwood's previous owner, Mr. Terry. The Directors voted unanimously to

issue a subpoena for Mr. Terry to address the alleged waiver of tap fees and to schedule an additional Hearing. The Authority's Order reflecting these decisions was entered on May 10, 2000.

Accordingly, a subpoena has been issued and served upon Mr. Terry, requiring him to testify before the Authority at a Public Hearing and to produce documents related to Lynwood.³⁵ A Hearing for this purpose has been set for August 2, 2000.

The Petition for Reconsideration

On May 24, 2000, Mr. Jacob C. (Chris) Martin contacted the Authority's Executive Secretary by e-mail. In his e-mail message, Mr. Martin expressed concerns about the "huge rate increase" approved for Lynwood. Mr. Martin questioned the approval of the rate increase without first resolving such issues as the loan or hearing testimony from Mr. Terry. Mr. Martin asked for information about filing a Petition for Reconsideration.³⁶ The same day, the Authority's Executive Secretary replied to Mr. Martin by e-mail and informed him that he would need to file a written request with the Authority stating the grounds for reconsideration. The Executive Secretary also told Mr. Martin that he would accept Mr. Martin's e-mail message dated May 24, 2000 as a request that would toll the deadline for filing a formal petition for reconsideration.³⁷

In the form of a letter dated May 25, 2000 and received by the Authority on May 31, 2000, Mr. Martin submitted a written Petition for Reconsideration. Mr. Martin identified himself as a resident of the Cottonwood subdivision. He stated that a review of

³⁵ Upon request by Lynwood, the Authority did not proceed immediately with the subpoena. By letter dated March 3, 2000, Lynwood asked the Authority to wait before issuing the subpoena because Lynwood was in negotiations with Mr. Terry. Nothing further has been heard from Lynwood about these negotiations.

³⁶ E-mail message from Jacob C. (Chris) Martin to David Waddell, May 24, 2000, filed in the docket file on July 20, 2000.

³⁷ E-mail message from David Waddell to Jacob C. (Chris) Martin, May 24, 2000.

the documents in this docket posted on the Authority's website "has led me to conclude that while a rate increase of some degree is justifiable, the amount requested by Lynwood Utility and approved by the Authority is excessive."³⁸ Mr. Martin stated that he was petitioning the Authority to reconsider that part of the rate increase which charges residential customers a rate of \$5.77 per thousand (1,000) gallons of water use.³⁹

Mr. Martin's Petition stated that Cottonwood residents met on numerous occasions with Mr. Terry and then with Mr. Lamb, who represented Lynwood. About these meetings, Mr. Martin stated:

It is now apparent to the officers of the Cottonwood Homeowners' Association that they were, putting it in the kindest words possible, misled by Lynwood Utility about the economic impact that the addition of Legends Ridge and River Landing subdivisions would have on the residents of Cottonwood.⁴⁰

In summing up his concerns about the rate increase, Mr. Martin stated that the rates approved for Lynwood are "substantially higher than comparable service being provided in this area by other sewage treatment facilities."⁴¹ He questioned the "motives and actions" of the development companies that had invested in Lynwood since 1996, stating that they have invested "carelessly and with apparent lack of due diligence."⁴² Mr. Martin further stated that these companies "appear to have considered money invested in Lynwood Utility as 'risk free' because they are asking the residents of Cottonwood to reimburse them for their investment plus a profit."⁴³ "In essence," Mr.

³⁸ Petition, May 25, 2000, at 1.

³⁹ Petition, May 25, 2000, at 1.

⁴⁰ Petition, May 25, 2000, at 3.

⁴¹ Petition, May 25, 2000, at 4.

⁴² Petition, May 25, 2000, at 4.

⁴³ Petition, May 25, 2000, at 4.

Martin stated, "Cottonwood residents are subsidizing [the development companies'] property developments."⁴⁴

Mr. Martin went on to state that "there is substantial evidence that the various owners of Lynwood Utility since 1996 have not engaged in good faith dealings with the residents of Cottonwood," and he cited other alleged problems, unrelated to sewer service, that property owners have had with Mr. Terry.⁴⁵ Mr. Martin also expressed concern over the apparent failure of Lynwood's owners to request approval of Lynwood's transfer of ownership and incurring of debt.⁴⁶ While he admitted that some rate increase "would have been necessary due to normally rising operating costs and needed plant maintenance and improvements," Mr. Martin stated that "one would expect that rates might be somewhat comparable to other utilities in the area."⁴⁷

In conclusion, Mr. Martin asked the Authority to take testimony from David Terry and conduct a more complete accounting and exploration of all the money transactions, including funds advanced from Lumbermen's, the loan from First Tennessee Bank, and the property transfer from Mr. Martin Zeitlin⁴⁸ to Mr. Terry and from Mr. Terry to Southern Utility.⁴⁹

On June 8, 2000, the Authority received Lynwood's Response to Mr. Martin's Petition. Lynwood presented three arguments in opposition to the Petition: (a) that the Petition was not timely filed, (b) that Mr. Martin lacked standing to file a Petition for Reconsideration, and (c) that Mr. Martin had stated no valid grounds for reconsideration.

⁴⁴ Petition, May 25, 2000, at 4.

⁴⁵ Petition, May 25, 2000, at 4.

⁴⁶ Petition, May 25, 2000, at 4.

⁴⁷ Petition, May 25, 2000, at 5.

⁴⁸ Mr. Zeitlin was the owner of Lynwood before Mr. Terry.

⁴⁹ Petition, May 25, 2000, at 5.

By letter dated June 15, 2000, Mr. Martin replied to Lynwood's Response, contesting each of Lynwood's arguments, and by letter dated July 3, 2000, Lynwood responded to Mr. Martin's reply, reiterating its grounds for denial of his Petition.

In addition to the formal Petition filed by Mr. Martin, the Authority has received a number of letters and e-mail messages from customers of Lynwood who have expressed dissatisfaction with Lynwood's rate increase. This correspondence generally touches on the same concerns that Mr. Martin raised in his Petition. This correspondence has been placed in the docket file in this case.

The July 11, 2000 Authority Conference

Mr. Martin's Petition for Reconsideration came before the Directors at the regularly scheduled Authority Conference held on July 11, 2000. The Directors heard statements in support of Mr. Martin's Petition from Mr. Martin, from Mr. Randolph Jones, and from State Representative Charles M. Sargent, after which the Directors deliberated on Mr. Martin's Petition.

Mr. Martin explained that he is a resident of Cottonwood and that he is acting as liaison to Lynwood for the Cottonwood Homeowners Association. Mr. Martin stated that Lynwood's rate increase had been handled in a deceptive manner. He stated that the relations between Mr. Terry, whom he understood to be the original developer of River Landing, and the subsequent developers, had not been adequately explored. Mr. Martin stated that the various owners of Lynwood invested a great deal of money in Lynwood so that they could develop Legends Ridge and River Landing, yet assured the residents of Cottonwood that expenditures for these developments would not have an adverse financial effect on them. Instead, he stated, Cottonwood residents are now funding the

expansion of Lynwood's system for service to Legends Ridge and River Landing. He questioned the documentation Lynwood submitted to the Authority, alleging that it understates Lynwood's projected revenues. Mr. Martin also questioned the handling of the \$305,000 loan from First Tennessee bank to Mr. Terry.

As to Lynwood's rates, Mr. Martin stated that the rates approved for Lynwood are higher than those charged by surrounding utilities, such as Nashville and Franklin. Although he admitted that the rates previously paid by Lynwood's customers were low, Mr. Martin stated that Lynwood's rates should be in line with those of other utilities. Mr. Martin also objected to Lynwood's new practice of billing its customers for sewer service based on their water usage. He explained that this is unfair to some customers who may use large amounts of water in a way that does not involve sewer service, resulting in a large sewer bill simply because they have a large water bill. He stated that some kind of rate averaging should be required to account for high water use, especially in summer months.

Mr. Randolph Jones also spoke in support of Mr. Martin's Petition. Mr. Jones explained that he too is a resident of Cottonwood and has served as liaison for the Cottonwood Homeowners Association. Like Mr. Martin, Mr. Jones objected to the practice of billing customers for sewer service based simply on the amount of water they use. Mr. Jones also stated that Lynwood is operating at only about fifty percent (50%) capacity at the present time and that when Lynwood comes closer to full capacity as the lots in Legends Ridge and River Landing are filled, Lynwood will be earning well above the eight percent (8%) rate approved by the Authority.

Rep. Charles Sargent, whose legislative district includes the area in Williamson County served by Lynwood, told the Authority that he is also a resident of the Cottonwood subdivision. Rep. Sargent stated that at least ten percent (10%) of Lynwood's customers had contacted him to object to Lynwood's rate increase. While he admitted that Lynwood's prior rates were artificially low, Rep. Sargent objected to the magnitude of Lynwood's increase, noting that Lynwood's new rates are significantly higher than those charged in the City of Franklin and adjoining areas outside the City. Rep. Sargent also asked for some kind of adjustment or averaging to address the issue of charging customers based on their water when some of that water use is not related to sewer use.

FINDINGS

Reconsideration

Reconsideration of an agency action is governed by Tenn. Code Ann. § 4-5-317, which states in pertinent part:

(a) Any party, within fifteen (15) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested.

Tenn. Code Ann. § 4-5-102 defines a "party" as follows:

(8) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.⁵⁰

Although Mr. Martin has demonstrated an obvious personal interest in this matter as well as a willingness to speak on behalf of other Lynwood customers, the Authority must consider the fact that he is currently not a party, as defined in Tenn. Code Ann. § 4-

⁵⁰ As indicated above, the evidentiary record in this matter had been closed and an Order approving a rate increase had been issued well before Mr. Martin filed his Petition.

5-102, to this proceeding.⁵¹ For this reason, a majority of the Directors concluded that, because Mr. Martin is not a party to this proceeding, it is not within the Authority's discretion to grant his Petition for Reconsideration.⁵²

Because Mr. Martin's Petition is precluded for the previously stated reasons, the Authority does not need to consider the objections raised by Lynwood. Two statements in Lynwood's Response to his Petition should be addressed, however. Lynwood states that Mr. Martin's Petition was not timely filed because it was not filed within ten (10) days of the entry of the Order. Public Chapter 594, which became law on March 15, 2000, increased the time period from ten (10) to fifteen (15) days. Mr. Martin's Petition was filed on May 25, 2000. Second, Lynwood's reply states that "[h]istorically, the Authority has not permitted individual residential customers of a regulated utility to intervene as a party in a pending rate case absent some special interest of such consumer."⁵³ The Authority takes issue with this statement. It is not the policy of the Authority to deny residential customers the opportunity to participate in rate proceedings.

Intervention

Although the Authority cannot grant Mr. Martin's Petition, Mr. Martin and those he represents need not be denied prospective participation in this matter. The May 10, 2000 Order left this docket open for further consideration of three issues. Mr. Martin has expressed concern about each of these issues.

In recognition of this situation, the Directors agreed to allow Mr. Martin to intervene and participate in further proceedings in this matter. Mr. Martin will be

⁵¹ Likewise, Tenn. Code Ann. § 65-2-114, which provides for petitions for rehearing in contested cases before the Authority, grants the right to make such a petition only to "any party."

⁵² A motion by Chairman Kyle to approve Mr. Martin's Petition was not seconded.

⁵³ Response to Petition for Reconsideration, June 8, 2000, at 2.

allowed to intervene on a purely prospective basis and only as to the issues that were held open for consideration in the Order. Accordingly, Mr. Martin's name will be placed on the service list in this docket.⁵⁴

This approach is consistent with Tenn. Code Ann. § 4-5-310, which permits an agency to

grant one (1) or more petitions for interventions at any time upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

This section further provides that

(c) If a petitioner qualifies for intervention, the administrative judge or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition. . . .

Further Actions in This Matter

Notwithstanding its decision as to Mr. Martin's Petition for Reconsideration of the Order, the Authority remains mindful of its responsibilities to ensure that the rates Tennessee consumers pay for utility services are just and reasonable. The Authority notes that a utility's request for approval of a rate increase does not present the only occasion for the Authority to review and, if necessary, correct utility rates.

Tenn. Code Ann. § 65-5-201 provides that

The Tennessee regulatory authority has the power after hearing upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates which shall be imposed, observed, and followed thereafter by any public utility as defined in § 65-4-101, whenever the authority shall determine any existing individual

⁵⁴ Mr. Martin stated that he would be responsible for notifying other Lynwood customers when he is served with documents relating to this docket as well as for distributing such documents to any such interested customers.

rate, joint rate, toll, fare, charge, or schedule thereof or commutation, mileage, or other special rates to be unjust, unreasonable, excessive, insufficient, or unjustly discriminatory or preferential, **howsoever the same may have heretofore been fixed or established.** In fixing such rates, joint rates, tolls, fares, charges or schedules, or commutation, mileage or other special rates, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility. (Emphasis supplied).

The Authority is well aware that its further consideration of the remaining issues in this matter may bring to light additional facts which bear on the justness and reasonableness of Lynwood's rates.⁵⁵ In addition, such facts may also emerge at a later time as a result of the quarterly and annual financial filings submitted to the Authority by Lynwood or the Authority's own audits of the Company. As a matter of course, should the Authority determine that a review of Lynwood's rates, pursuant to Tenn. Code Ann. § 65-5-201, is warranted, the Authority will undertake such a review and, if necessary, will act to remedy any unjustness it discovers.

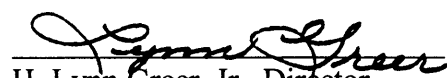
IT IS THEREFORE ORDERED THAT:

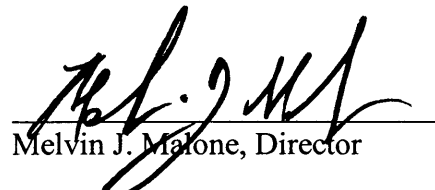
1. The Petition for Reconsideration filed by Jacob C. (Chris) Martin is denied;
2. Mr. Martin is allowed to intervene in this matter and participate in further proceedings as to the three outstanding issues stated in the Authority's May 10, 2000 Order, which are (1) the overbilling of Walnut Grove Elementary School; (2) the transfer of control of Lynwood from the previous owner to the current owners; and (3) the alleged waiver of tap fees by the previous owner; and

⁵⁵ At the July 11, 2000 Conference, Director Malone reported that on July 10, 2000, the Authority had received a letter from Mr. Terry referring to an agreement between Legends Ridge and the current owner of Lynwood to pay tap fees that had been waived. Director Malone stated that such an agreement, if it exists, should be considered in reviewing the overall rate increase because this information was not before the Authority when it considered the rate increase.

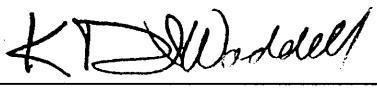
3. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary